LUKE AIR FORCE BASE,
Arizona, Petitioner-Cross Respondent,
vs.
FEDERAL LABOR RELATIONS AUTHORITY,
Respondent-Cross Petitioner,
AMERICAN FEDERAL OF GOVERNMENT EMPLOYEES, AFL-CIO (AFGE), Local 1547,
Respondent-Intervenor.

Nos. 98-71173, 98-71347
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

1999 U.S. App. LEXIS 34569

December 8, 1999, Argued and Submitted, San Francisco, California
December 30, 1999, Filed

NOTICE: [*1] RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY: Petitions for Review of a Decision of the Federal Labor Relations Authority.

DISPOSITION: REVERSED.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner-cross respondent air force base sought review of the decision of respondent-cross petitioner Federal Labor Relations Authority finding it had violated 5 U.S.C.S. § 7114 by not giving respondent-intervenor union notice and opportunity to be represented at a meeting settling a discrimination claim.

OVERVIEW: The collective bargaining agreement between respondent-intervenor union and petitioner-cross respondent air force base excluded discrimination claims from its grievance procedure. A union member filed claims pursuant to Equal Employment Opportunity Commission (EEOC) regulations rather than the grievance procedure and designated the president of respondent-intervenor union, as her personal representative. A settlement agreement was signed without the president's presence and respondent-intervenor union filed unfair labor practice charges. Respondent-cross petitioner Federal Labor Relations Authority found that petitioner-cross respondent air force base violated 5 U.S.C.S. § 7114 (1998) by not giving respondent-intervenor union notice and opportunity to be represented at the settlement meeting. The court held that: (1) "grievances" under § 7114(a)(2)(A) did not include the discrimination complaints that were brought pursuant to EEOC procedures; (2) therefore respondent-intervenor union had no right of representation at the settlement meeting; and therefore (3) petitioner-cross respondent air force base did not violate § 7114.

OUTCOME: Decision reversed; "grievances" under the labor statute did not include discrimination complaints brought pursuant to EEOC procedures; therefore respondent-intervenor union had no right of representation at the settlement meeting; and petitioner-cross respondent air force base did not violate statute.

CORE TERMS: grievance, grievance procedure, notice, collective bargaining agreement, exclusive representative, bargaining unit, scheduled

In order for an union to possess a right to representation at a meeting, the following elements of 5 U.S.C.S. 7114(a)(2)(A) must exist: There must be (1) a discussion, (2) which is formal, (3) between the representatives of the government employer and the unit employee or her representatives (4) concerning a grievance.

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For FEDERAL LABOR RELATIONS AUTHORITY, Petitioner (98-71347): Solicitor, James F. Blandford, Attorney, FEDERAL LABOR RELATIONS AUTHORITY, Washington, DC.

For FEDERAL LABOR RELATIONS AUTHORITY, Respondent (98-71173): Solicitor, William R. Tobey, Esq., James F. Blandford, Attorney, FEDERAL LABOR RELATIONS AUTHORITY, Sandra Wien Simon, Esq., U.S. DEPARTMENT OF JUSTICE, Washington, DC.

For LUKE AIR FORCE BASE, Respondent (98-71347): Sandra Wien Simon, Esq., William - Kanter, Esq., U.S. DEPARTMENT OF JUSTICE, Washington, DC.

For AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO (AFGE), Local 1547, Respondent - Intervenor (98-71173): Kevin M. Grile, Esq., American Federation of Government Employees, AFL-CIO, Chicago, IL.

JUDGES: Before: WIGGINS, O'SCANNLAIN, and HAWKINS, [*2] Circuit Judges.

OPINION: MEMORANDUM [1]

American Federation of Government Employees, Local 1547, is the exclusive representative of a bargaining unit at Luke Air Force Base ("Luke"). The collective bargaining agreement between the union and Luke excludes discrimination claims from the grievance procedure provided in the agreement. Tillie Cano, a member of the union's bargaining unit, filed her claims pursuant to Equal Employment Opportunity Commission ("EEOC") regulations rather than the grievance procedure. For the mediation and the investigation scheduled in connection with these complaints, Cano designated Paul King, president of the union, as her personal representative. On January 18, 1995, Cano, King, and representatives from Luke and the Office of Complaint

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Investigation met for the first time. King left the meeting early. At the end of the first [*3] meeting, a second meeting was scheduled for the next day; however, no one from Luke's management attempted to contact King or the rest of the union regarding the second meeting. At the January 19 meeting, Cano signed a settlement agreement without King's presence.

In May and October of 1995, the union filed unfair labor practice charges against Luke before the Office of Administrative Law Judges, part of the Federal Labor Relations Authority ("FLRA"). The Chief Administrative Law Judge found that Luke failed to comply with Section 7114 of the Federal Service Labor-Management Relations Statute ("Labor Statute") because Luke did not give the union notice and an opportunity to be represented at the January 19 meeting. [2]In August 1998, the FLRA adopted the ALJ's conclusion in a decision and order. We have jurisdiction under 5 U.S.C. § 7123. We may set aside a decision issued by the FLRA only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Department of Veterans Affairs Med. Ctr. v. FLRA, 16 F.3d 1526, 1529 (9th Cir. 1994). Because we conclude that the FLRA acted arbitrarily and capriciously in [*4] deciding that Luke violated Section 7114 of the Labor Statute, we REVERSE.

In order for the union to possess a right to representation at a meeting, the following elements of Section 7114(a)(2)(A) must exist: There must be (1) a discussion, (2) which is formal, (3) between the representatives of the government employer and the unit employee or her representatives (4) concerning a grievance. See General Serv. Admin. v. American Fed'n of Gov't Employees, 48 F.L.R.A. 1348, 1354 (1994). Under IRS, Fresno Serv. Ctr. v. FLRA, 706 F.2d 1019, 1024 (9th Cir. 1983), [*5] "grievances" within the meaning of Section 7114(a)(2)(A) do not include Cano's complaints because they were brought pursuant to EEOC procedures, which are "discrete and separate from the grievance process to which 5 U.S.C. [§] . . . 7114 [is] directed." The fact that the collective bargaining agreement explicitly excludes discrimination claims from the grievance procedure also suggests that these claims are not "grievances." See id. Because the January 19 meeting did not concern "grievances" within the meaning of Section 7114, the meeting did not satisfy the fourth element of Section 7114. The union therefore had no right of representation at the meeting. As such, Luke did not violate Section 7114 when it failed to give the union notice of the January 19 meeting.

REVERSED.

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[2] Section 7114(a) of the Labor Statute provides in relevant part:

> (2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at -- (A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance . . . .
> 5 U.S.C. § 7114 (1998).